The Planning Inspectorate

Appeal Decision

Site visit made on 3 December 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/H5960/D/20/3257614
6 Muncaster Road, London SW11 6NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Volodymyr Ivaniouk against the decision of the Council of the London Borough of Wandsworth.
- The application Ref 2020/1587, dated 4 May 2020, was refused by notice dated 30 June 2020.
- The application sought planning permission for alterations including remodelling of part single, part two storey rear extension and installation of French doors and safety railings at first floor level without complying with conditions attached to planning permission Ref 2017/3089, dated 25 September 2017.
- The conditions in dispute are Nos (1) and (3) which state that: (1) The development shall be carried out in accordance with the approved drawings - PL702 Rev A, PL703 Rev B, PL705 Rev A, PL706 Rev B, PL707 Rev B, PL708 Rev C and PL709 Rev C - and specifications, unless approved otherwise in writing by the local planning authority; (3) The balustrades of the first floor French doors in the rear elevation shall be obscure-glazed, and retained permanently afterwards as approved unless otherwise agreed in writing by the local planning authority.
- The reasons given for the conditions are: (1) To ensure a satisfactory standard of development, and to allow the local planning authority to review any potential changes to the scheme; (3) To control overlooking, and safeguard the privacy of neighbours in accordance with Council policy DMS1(c).

Decision

1. The appeal is allowed and planning permission is granted for alterations including remodelling of part single, part two storey rear extension and installation of French doors and safety railings at first floor level at 6 Muncaster Road, London SW11 6NT in accordance with the application Ref: 2020/1587, dated 4 May 2020, without compliance with condition numbers (1) and (3) previously imposed on planning permission Ref: 2017/3089 dated 25 September 2017 and subject to the attached schedule of conditions.

Procedural Matters

2. The appeal was submitted by Mr Volodymyr Ivaniouk. However, the applicant's name is stated as Mr Vlad Ivaniouk on the planning application. The appellant has confirmed in writing that the planning application and appeal were submitted by the same person. I have dealt with the appeal on that basis. In the interests of clarity and precision, I have used the appellant's full name, as stated on the appeal form, in the banner heading above.

Background and Main Issue

3. Planning permission was granted on 25 September 2017 for alterations and extensions to the appeal property, which included the erection of a part two storey rear extension. The first floor of the extension is stepped in from the ground floor and there are first floor doors which provide access to the roof area of the ground floor extension below. The edge of the roof has a low brick wall, which acts as a first-floor safety railing. The approved plans show that obscurely glazed balustrading is to be installed immediately in front of the first floor doors. The works have been completed, but the obscurely glazed balustrading has not been installed.

4. Condition (4) of the planning permission, which is not in dispute, states "the roof of the extensions hereby permitted shall not be used as a balcony, roof garden, sitting out area or for any purpose of a similar nature without the prior written consent of the local planning authority". The reason given for this condition is to protect the privacy of neighbours and prevent overlooking.

5. The Council explain that the use of the roof area as an unlawful terrace would provide opportunities for users to overlook directly into the back gardens and windows of neighbouring properties. Consequently, they state that it is prudent that additional measures are put in place to prevent access to the roof area in the circumstance that Condition (4) is not adhered to. As such, Condition (3) of the planning permission, which is in dispute, requires the balustrading to be obscurely glazed, and retained permanently afterwards as approved unless otherwise agreed in writing by the local planning authority.

6. The appellant argues that the roof cannot be used as a roof terrace because it is of a limited size with a sloping roof light, sloping gutter, gulley and kitchen extract flue. In addition, he explains that the balustrading would not prevent overlooking. On that basis, he contends that Condition (3) is unnecessary and not relevant to planning.

7. Therefore, the main issue in this appeal is whether the condition is necessary and relevant in the interests of protecting the living conditions of the adjoining occupiers, in respect of privacy.

Reasons

8. Paragraph 55 of the National Planning Policy Framework (the 'Framework') states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (the 'PPG') explains that any proposed condition that fails to meet one of the six tests should not be used.

9. Despite the limited size of the roof area and the presence of the sloping roof light, sloping gutter, gulley and kitchen extract flue, all of which would effectively prevent occupiers of the host building erecting outdoor furniture on the roof area, based on the evidence before me, which includes my site observations, I consider that the roof area would provide sufficient space for the occupiers of the appeal property to stand outside for a prolonged period and use the roof area as an outdoor terrace.

10. Whilst this may not be the current owner's intention, indeed they contend that the use of the roof area for such purposes would be contrary to Building

Regulations, this is not a determinative point because planning permission runs with the land and future occupiers of the appeal property may seek to use the roof area in this manner.

11. Owing to the elevated position of the roof area, if it were to be used as a roof terrace, it would provide occupiers of the appeal property with clear and unobstructed views into the gardens and windows of the adjoining properties, which would undermine the privacy of adjoining occupiers. Consequently, I share the Council's view that the use of the roof area as a roof terrace, or a similar use, should be prohibited to protect the privacy of adjoining neighbours.

12. Criterion (c) of Policy DMS1 of the Wandsworth Local Plan: Development Management Policies Document (the 'DPD') states that planning permission will be granted for development which does not harm the amenity of occupiers/users and nearby properties through, amongst other things, privacy.

13. The installation of glass balustrading would prevent access onto the roof area, which would safeguard the living conditions of adjoining occupiers, and, to this regard Condition (3) would be relevant to the development permitted. Nevertheless, owing to the low height of the approved balustrading, it is unclear what meaningful purpose would be served by requiring the glass to be obscurely glazed. However, given my conclusions below, this is not a determinative point on which this appeal turns. Therefore, this is not a matter which I need to address.

14. Condition (4) of the planning permission prevents the use of the roof area as a balcony, roof garden, sitting out area or for any purpose of a similar nature without the prior written consent of the local planning authority. Therefore, there is a suitable mechanism in place to prohibit the roof area from being used as a roof terrace. In this context, Condition (3) is superfluous and fails the test of necessity because it requires more than is needed to prevent the roof area being used as a roof terrace, or for a similar use.

15. Notwithstanding the above, I also conclude that Condition (3) would fail the test of enforceability because it does not include a timing clause. Therefore, there is no mechanism in place to control when the works are to be carried out.

16. The Council state that the development has reached 'practical completion' and as the works differ from the approved plans, they contend that Condition (3) is enforceable. I do not share the Council's position on this matter. Condition (1) requires the development to be carried out in accordance with the approved plans, it does not require the development to be completed. As such, the plans list condition cannot require that all features shown on the plans are provided or retained, or that the development and all of its component parts are to be completed. The condition can only ensure that the development accords with the plans if and insofar as it is carried out.

17. For the above reasons, I conclude that condition No (3) is unnecessary and fails the test of enforceability taking into account the advice within the Framework and the PPG on the use of planning conditions. Given that Condition (4) would safeguard the living conditions of adjoining occupiers in respect of privacy, there would be no conflict with Policy DMS1 of the DPD.

Other Matters

18. The appellant has positioned timber planters on top of the existing parapet wall, which runs around the edge of the roof area. The Council state that this is a breach of Condition (4), which prevents the roof area from being used as a roof garden. The appellant explains that the planters are not fixed structures and no breach of planning control has occurred. Whether or not a breach of planning control has occurred falls outside the scope of this appeal.

Conditions

19. The PPG makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.

20. To this regard, no evidence has been put forward by either of the main parties to demonstrate that any conditions from the original planning permission have been discharged. Nevertheless, as works have commenced at the site, it is not necessary to impose the statutory time limit condition.

21. In respect of the plans list condition, I have listed the approved plans, as it is necessary that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.

22. Where necessary I have amended the wording of the conditions to remove the tailpiece phrases. The Courts[1] have found that such clauses can create uncertainly in what is permitted and enable development not applied for, assessed or permitted to occur.

Conclusion

23. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Christopher Miell

INSPECTOR

[1] Midcounties Co-operative Ltd v Wyre Forest DC [2009] EWHC 964

Schedule of Conditions

1) The development hereby permitted shall be carried out in accordance with the following approved plans: PL702 Rev A, PL703 Rev C, PL705 Rev A, PL706 Rev E, PL707 Rev B, PL708 Rev C and PL709 Rev D.

2) The external materials to be used in the approved development shall match those of the existing building.

3) The roof of the extensions hereby permitted shall not be used as a balcony, roof garden, sitting out area or for any purpose of a similar nature.

***** END OF CONDITIONS *****